

JUDGE THOMAS P. AGRESTI

Effective January 13, 2006

The following procedures are specific to Judge Agresti's cases and are mandatory unless otherwise ordered.

These procedures and the hearing dates posted are subject to change at any time. Parties and Counsel are responsible for reviewing the procedures and using only the posted hearing dates.

These procedures supplement and do not replace the Federal Rules of Bankruptcy Procedure, Local Rules, Court Procedures Manual, and General Orders of this Court.

A. GENERAL PROCEDURES APPLICABLE TO ALL JUDGE AGRESTI CASES

(1) ***Filing Pleadings and Proposed Orders:*** All pleadings are to be electronically filed with the Clerk. All pleadings requesting relief must include, as a separate attachment, a proposed order granting the relief requested. All pleadings and other documents, including orders and certificates of service, regarding a matter that is already filed shall contain the docket number of the matter to which they relate.

(2) ***Courtesy Copies:*** No courtesy paper copies of electronically filed pleadings which require judicial action shall be delivered directly to Judge Agresti unless specifically ordered. No pleadings or correspondence are to be faxed or e-mailed to Chambers unless authorized by Judge Agresti or his staff.

(3) ***Continued, Rescheduled, Cancelled Hearings:*** Hearings will not be continued, rescheduled, or cancelled, even if the matter has been settled, unless an appropriate motion and proposed order have been electronically filed with the Clerk at least 3 (three) business days before the scheduled hearing date. If time does not allow filing 3 days before the scheduled hearing date, a representative of a Party must appear at the scheduled hearing to provide a status report to the Court. Calling Chambers or the Chapter 11 or 13 Clerks will not continue, reschedule, or cancel the hearing.

(4) ***No Witnesses on Motions Days:*** No witnesses will be heard on motions days unless the court specifically orders otherwise in a particular case. All evidentiary hearings will be specially scheduled.

(5) ***Video Conference Procedures:*** For purposes of efficient video conference hearings, the Moving Party should stand at the podium. The Respondent(s) may be seated, generally, at counsel table closest and to the right of the podium. Counsel must speak clearly into a microphone however when doing so please position yourself at least 4 inches away from the

microphone to allow for clear audio.

(6) ***Fee Applications:*** All fee applications must be signed by an attorney licensed to practice law and admitted to this Court consistent with *Local Rule 2016-1*. No fee applications will be accepted and will be summarily dismissed if filed by anyone other than an attorney admitted to practice in this Court.

B. PROCEDURES APPLICABLE TO CH. 7 AND CH. 11 CASES BEFORE JUDGE AGRESTI

(1) *Scheduling of Hearings:*

- (a) Documents are to be electronically filed with the Clerk's Office. Thereafter, scheduling Orders will be issued from Chambers which schedule any required hearings and, where applicable, outline the specific procedures to be utilized. Use of the *Certificate of No Objection* procedure is encouraged although the filing of a CNO may not result in the issuance of a default order without a prior hearing. Any pleadings in Ch. 7 or Ch. 11 cases which are self-scheduled will be dismissed.
- (b) In the event that no response or answer to a particular matter has been filed, the Parties may check our web site (www.pawb.uscourts.gov) the afternoon before the hearing to determine if the hearing will go forward or if a default order will be entered. The only motions entered by default Order, without hearing, involve the following matters: Relief from Stay, Avoidance of Lien and Objection to Claim.
- (c) No documents filed less than 48 hours before a scheduled hearing will be considered by the Court at the scheduled hearing unless exigent circumstances are demonstrated.

(2) ***Emergency Hearings:*** In regards to emergency matters, counsel is required to telephonically notify Judge Agresti's Courtroom Deputy, Diane Rice at 412-644-4060 Ext. 105, of the filing of any pleading requesting emergency treatment and hand deliver a courtesy copy of the pleading to the Clerk's Office to the attention of Diane Rice.

(3) *Telephone Participation:*

- (a) ***TELEPHONE PARTICIPATION.*** In an effort to accommodate the Bar and reduce travel expense, the Court will allow Counsel and Parties located more than ***one hundred (100) miles away from Pittsburgh*** to appear by telephone for NON-EVIDENTIARY hearings.
- (b) ***ADVANCE NOTICE.*** Parties or counsel wishing to participate in a hearing by telephone must advise the Court and opposing Parties – ***at least three days prior to the hearing*** in which they request to appear by phone.

Arrangements for telephone participation may be made by contacting Judge Agresti's Courtroom Deputy, Diane Rice, at 412-644-4060, extension 105.

(c) ***TWO OR MORE PARTIES:***

- (I) If two or more Parties are to participate by telephone, the Party initiating the call must arrange to have the other Party(ies) on the line ***before*** connecting to the Court line.
- (ii) If more than one Party is to be joined on the call, it is ***required*** that a ***commercial telephone conference service*** (i.e., MCI, Sprint, AT&T) be used; otherwise, the transmission is often degraded to an inaudible level.
- (iii) Use of a speaker phone or cell phone during the conference call is strictly prohibited.

(4) ***Certificate of No Objection Procedure:*** It is requested that a CNO be filed if no response/answer is filed by the due date. At the discretion of Judge Agresti, it is possible the matter may not be defaulted and the hearing will remain scheduled. The website can be checked the day prior to the scheduled hearing to determine if the matter remains on the calendar.

C. PROCEDURES APPLICABLE TO CH. 13 CASES BEFORE JUDGE AGRESTI

(1) ***Generally, Counsel is requested to self-schedule a Chapter 13 Hearing Date:***

- (a) Except with respect to those matters listed in (1)(c), below, Movant shall choose a hearing date from the list provided [see below for Chapter 12 and Chapter 13 hearing dates] and shall complete, file and serve the Notice of Hearing. (See Paragraph (2), below, concerning the Notice of Hearing). ***ONLY*** the hearing dates listed shall be used. Any matters scheduled by movant for a date other than one listed shall be dismissed without prejudice to being refiled, renoticed, and rescheduled by movant for an authorized date. If a matter is dismissed for noncompliance, the filing party must serve all parties in interest with notice of the dismissal order and cancellation of the hearing.
- (b) Movant may schedule a new motion for hearing on a date with a previously scheduled matter or on the plan conciliation date.
- (c) The following matters shall be scheduled only by the Court, not by the Moving Party.

General Case Matters:

Evidentiary Hearings
Chapter 12 Plans
Amended Chapter 13 Plans
Amendments to Schedules
Applications to Modify Plans
Status Conference

Contested Matters, Applications, and/or Motions for:

Contempt
Dismissal or Conversion filed by Debtor
Extension of Time
Expedited Hearing
Hardship Discharge
Payment of Unclaimed Funds
Reconsideration of or to Vacate or Modify an Order
Reopen
Sanctions
Wage Attachments

- (d) The Court will schedule all matters filed in Adversary Proceedings and all evidentiary hearings.

(2) ***Notice of Hearing:*** Except with respect to matters that require a longer notice period (such as objections to claims) at least 25 calendar days before the chosen authorized hearing date, movant shall simultaneously electronically file the motion and notice of hearing and serve same on the Chapter 12 or 13 Trustee and all other respondents and parties in interest. The motion must be filed in sufficient time to allow the 17 days response time required by local rule ***and*** so that the deadline for filing responses/answers/objections is no later than 7 calendar days before the scheduled hearing date. Objections to claims must be filed at least 30 days before the chosen hearing date.

(3) ***Emergency Hearings:*** In regards to emergency matters, counsel is required to notify the appropriate Chapter 13 Clerk of the filing of any pleading requesting emergency treatment. For cases ending in digits 0-4 contact Connie Takacs at 412-644-4060, ext. 134; for cases ending in digits 5-9 contact Laurel McWilliams at 412-644-4060, ext. 155.

(4) ***Appearance of Counsel at Hearings:*** Counsel must appear at the scheduled hearing unless the order scheduling the hearing specifically provides otherwise. Do not contact Chambers or the Chapter 13 Clerk concerning whether a scheduled hearing has been cancelled. To determine whether a matter remains on the hearing calendar, check the calendar at www.pawb.uscourts.gov after 3:00 P.M. the day before the hearing. Orders entered by default will not be posted on the calendar. Only matters remaining on the hearing calendar will be posted. To verify whether a default order has been entered, check the docket.

(5) ***Certificate of No Objection:*** If a Certificate of No Objection is *timely* filed, the matter will be removed from the calendar by entry of a default order. If a Certificate of No Objection is *not timely* filed, the matter will remain on the calendar and counsel must appear at the hearing and explain to the Court why a CNO was not filed. The CNO procedure is vital to the efficient operation of Ch. 13 Motions Court. Because of the large volume of matters requiring hearing, it is imperative for the CNO process to work effectively and eliminate the need for hearings when possible. As such, it has become necessary for the Court to strictly enforce the Local Rules requiring the use of the CNO process in Ch. 13 matters. *The unexcused failure of counsel to adhere to the requirements of the Local Rules in this regard exposes counsel to a \$100 sanction, after notice and hearing.*

(6) ***Unexcused Failure to Attend Hearings:*** An additional burden is placed on the system when debtor's counsel, without appropriate explanation or prior contact with the Trustee's Office, fails to appear at a §341 Hearing or conciliation/confirmation conference conducted by the Ch. 13 Trustee. Failure of debtor's counsel to attend without either obtaining a prior order continuing a previously scheduled §341 Hearing or conciliation/confirmation conference, or, in the event of an emergency, making a timely phone call to the Ch. 13 Trustee advising her of the need to reschedule the same, evidences a lack of professionalism and failure to afford the proper courtesy due a fellow member of the Bar. *It is this Court's policy that such conduct exposes counsel to a \$100 sanction, after notice and hearing.*

(7) ***Telephone Participation in Johnstown Division Contested Matters:*** Parties and their counsel located in Johnstown may participate in non-evidentiary hearings for a case commenced in the Johnstown Division via telephonic conference call to be arranged by the movant's/plaintiff's attorney. Any respondent or non-moving party wishing to participate by phone shall make arrangements with counsel placing the call. Arrangements for participation may be made by contacting the appropriate Chapter 13 Clerk: for cases ending in digits 0-4, Connie Takacs at 412-644-4060, ext. 134; for cases ending in digits 5-9, Laurel McWilliams at 412-644-4060, ext. 155.

(8) ***Motion for Temporary Restraining Order:*** A plaintiff must electronically file a motion for temporary restraining order and a motion for preliminary injunction at the same adversary number as the complaint for injunctive relief. See *Fed.R.Bankr.P. 7065* and *Fed.R.Civ.P. 65*. As soon as the request for a temporary restraining order is filed, the plaintiff must call the Chapter 13 Clerk to arrange a hearing. For cases ending in digits 0-4 contact Connie Takacs at 412-644-4060, ext. 134; for cases ending in digits 5-9 contact Laurel McWilliams at 412-644-4060, ext. 155.